



June 4, 2001

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health Mental Retardation
P.O. Box 12668
Austin, Texas 78711-3761

OR2001-2294

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147951.

The Texas Department of Mental Health and Mental Retardation received a request for a copy of all files relating to a specific employee of the Waco Center for Youth. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses information protected by other statutes. You raise section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under . . . chapter [48 of the Human Resources Code];
- (2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [Texas Department of Protective and Regulatory Services] rule or investigating state agency rule and applicable federal law.

You represent that the submitted documents relate to reports and investigations made under chapter 48 of the Human Resources Code. Consequently, the documents at issue must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as otherwise provided by law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances). Because we are able to make a determination under section 552.101, we need not address your additional arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

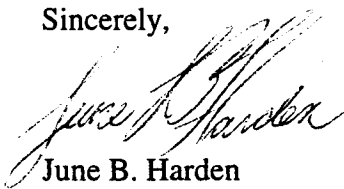
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 147951

Encl. Submitted documents

cc: Ms. Vickie Nitsch
UniServ Representative
TSTA Resource Center - Fort Worth
6021 Westcreek Drive
Fort Worth, Texas 76133
(w/o enclosures)